

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
GEORGE PRINCE	:	DETERMINATION
	:	DTA NO. 818876
for Redetermination of Deficiencies or for Refund of New York State Personal Income Tax under Article 22 of the Tax Law and New York City Personal Income Tax pursuant to the Administrative Code of the City of New York for the Periods April 1, 1993 through December 31, 1993; April 1, 1994 through December 31, 1994; January 1, 1995 through March 31, 1995 and January 1, 1996 through March 31, 1996.	:	

Petitioner, George Prince, 27 Maiden Lane, New City, New York 10956, filed a petition for redetermination of deficiencies or for refund of New York State personal income tax under Article 22 of the Tax Law and New York City personal income tax pursuant to the Administrative Code of the City of New York for the periods April 1, 1993 through December 31, 1993; April 1, 1994 through December 31, 1994; January 1, 1995 through March 31, 1995 and January 1, 1996 through March 31, 1996.

A small claims hearing was held before James Hoefer, Presiding Officer, at the offices of the Division of Tax Appeals, 90 South Ridge Street, Rye Brook, New York on March 27, 2003 at 1:00 P.M. Petitioner appeared *pro se*. The Division of Taxation appeared by Barbara G. Billet, Esq. (Salvatore Russo).

Since neither party elected to reserve time for the submission of post hearing briefs, the three-month period for the issuance of this determination began as of the date the hearing was held.

ISSUE

Whether the Division of Taxation properly denied petitioner's request for a conciliation conference on the basis that the request was not timely filed.

FINDINGS OF FACT

1. On May 29, 2001, the Division of Taxation ("Division") issued eight notices of deficiency to petitioner asserting that he was "an Officer/Responsible Person of: GEORGE PRINCE ET AL PTR." and, as such, was liable, pursuant to Tax Law § 685(g), "for a penalty in an amount equal to the tax not paid by the business. . . ." The notices were addressed to petitioner and sent by certified mail to his last known address at "27 Maiden Ln, New City, NY 10956-6630." Each notice contained a statement advising petitioner that if he disagreed with the amount asserted due he "must file a Request for Conciliation Conference or a Petition For A Tax Appeals Hearing" by August 27, 2001 and that if no response was received by August 27, 2001 the notice would "become an assessment subject to collection action."

2. Petitioner contested all eight notices by filing a Request for Conciliation Conference with the Division's Bureau of Conciliation and Mediation Services ("BCMS"). Although the Request for Conciliation Conference bore a signature date of August 16, 2001, the request was mailed in an envelope which contained a United States Postal Service postmark of October 1, 2001. The request was subsequently date-stamped as received by BCMS on October 4, 2001.

3. On October 19, 2001, BCMS issued a Conciliation Order Dismissing Request to petitioner wherein his request for a conciliation conference was denied for the following reason:

“The Tax Law requires that a request be filed within 90 days from the date of the statutory notice. Since the notices were issued on May 29, 2001, but the request was not mailed until October 1, 2001, or in excess of 90 days, the request is late filed.”

4. Petitioner timely protested the Conciliation Order Dismissing Request by filing a petition with the Division of Tax Appeals and this proceeding ensued. Since the Division has raised the issue regarding the timeliness of petitioner’s Request for Conciliation Conference, the scope of the small claims hearing held herein was limited to this threshold jurisdictional issue. In instances such as this where the timeliness of the Request for Conciliation Conference is in dispute, the Division has the burden of proving proper mailing of the notices of deficiency.

5. To establish the date that the notices were mailed, that it has a standard procedure for the issuance of notices of deficiency and that the standard procedure was followed in this case, the Division offered in evidence its certified mailing records, copies of all eight notices of deficiency and the affidavits of two employees familiar with the creation, processing and mailing of notices of deficiency. The certified mailing records, copies of the eight notices of deficiency and the affidavits of the Division’s two employees, when taken together, sufficiently establish that the Division has a standard procedure for issuance of notices of deficiency and that said procedures were followed in the instant matter.

6. Although not conceded, there appears to be no dispute on petitioner’s part that he received the eight notices of deficiency in a timely manner and that his Request for Conciliation Conference was not filed in a timely manner. Petitioner submitted in evidence a letter dated October 1, 2001 from his certified public accountant which states that:

Please be advised that I was out of my office, due to illness during July and August, 2001. I had the “disagreement with findings forms” in my office, which delayed processing and mailing.

Please afford Mr. George Prince an opportunity to present his challenge to the assessments at a hearing.

CONCLUSIONS OF LAW

A. Where a taxpayer files a Request for Conciliation Conference and the timeliness of said request is in question, the Division has the burden of proving that the notice was properly mailed (*see, Matter of Katz*, Tax Appeals Tribunal, November 14, 1991; *Matter of Novar TV & Air Conditioner Sales & Serv.*, Tax Appeals Tribunal, May 23, 1991). In the instant matter, the Division has presented sufficient evidence to prove that the eight notices of deficiency were all properly mailed to petitioner at his last known address on May 29, 2001 (Tax Law § 681[a]). Accordingly, in order to timely contest the notices of deficiency, petitioner was required to file the Request for Conciliation Conference within 90 days of the issuance of the notices, i.e., on or before August 27, 2001 (Tax Law §§ 681[a]; 689[b]; 170.3-a).

B. There is no dispute in the instant matter that petitioner's Request for Conciliation Conference was filed on October 1, 2001 (Tax Law § 691[a]) and that said request was mailed more than one month after it was required to be filed. Accordingly, it must be concluded that the Request for Conciliation Conference was filed beyond the statutory 90-day time period for the filing of such a request and that the Division of Tax Appeals is without jurisdiction to hear this matter.

C. The petition of George Prince is dismissed¹ and the Conciliation Order Dismissing Request dated October 19, 2001 is hereby sustained.

DATED: Troy, New York
April 24, 2003

/s/ James Hoefer
PRESIDING OFFICER

¹ Petitioner is not without recourse in this matter. Pursuant to Tax Law §§ 687(a) and 689(c) he can pay the liability for the periods in dispute, file a claim for refund anytime within two years of the date of payment and thereafter file either a request for conciliation conference or a petition. The request for conciliation conference or petition can be filed either (a) after six months from the date the refund claim was filed or (b) within two years from the date petitioner receives notice that the refund claim has been denied.